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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,721	01/27/2000	James W. Cree	15838-211	8978

53476 7590 12/29/2006
JOSEPH A TESSARI
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RICHMOND, VA 23225

EXAMINER

DAVIS, JENNA L

ART UNIT	PAPER NUMBER
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1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/29/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/491,721

Applicant(s)

CREE ET AL.

Examiner

Jenna Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____</p> |
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DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 6, 2006, has been entered.

Claim Objections

Claim 14a is objected to because of the following informalities: in claim 14, line 3, it appears that "nonwoven" is misspelled as "none oven". Appropriate correction is required.

Claim Rejections - 35 USC § 102/103

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-11, 13-17, and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman (US 5,336,545) substantially as set forth in section 4 on pages 2-5 of the Office action dated June 6, 2006. The claims now recite that the nonwoven webs are heat-drawn. It is not seen that this limitation distinguishes the claimed invention from Morman since the reference clearly states that the nonwoven webs used therein may be bonded to the elastic

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sheet using heat and pressure. This would consolidate the nonwoven webs in the same manner claimed here. See Mormon column 12, lines 63-68.

Claims 1-6, 9-11, 13-17, and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon in view of Hassenboehler (US Re35,206) substantially as set forth in section 5 on page 6 of the June 6, 2006, Office action.

Claims 7, 8, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon in view of Haffner (US 5789065) or alternatively over Mormon in view of Hassenboehler as applied to the claims above, and further in view of Haffner substantially as set forth in section 6 on pages 6 to 7 of the June 6, 2006, Office action.

Response to Arguments

Applicant's arguments filed October 6, 2006, have been fully considered but they are not persuasive. The argument that the present invention is distinguished from the prior art since the nonwoven webs are consolidated with heat drawing is not persuasive as Mormon expressly teaches that the materials disclosed therein may be bonded under heat and pressure. The Examiner equates this with what is now claimed as set forth above.

The argument that the necked nonwovens of Mormon are unlike the consolidated webs claimed here is not persuasive since the Mormon materials are bonded to the elastic sheet using heat and pressure in the same manner as applicant. Further this is unpersuasive as Hassenboehler teaches the advantages of consolidating nonwoven webs to improve elasticity of the nonwoven materials.

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The argument that Mormon fails to teach nonwovens having heat-drawn consolidated fibers is unpersuasive as the Examiner equates Mormon's use of heat and pressure with this process limitation as set forth above and further since Hassenboehler teaches the advantages of consolidation to improve elasticity in the cross direction.

As set forth in the last office action in section 7, page 7 the declaration of Bruce is not persuasive since the declaration is not commensurate in scope with the claimed invention as the declaration does not provide any numerical values of ultimate force to break to compare the claimed invention.

The argument that Mormon is deficient due to the use of a cold-drawn material is not persuasive as Mormon clearly teaches bonding the materials using heat and pressure which would cause consolidation of the type claimed here or at least renders obvious the claimed material.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

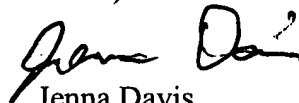
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna Davis whose telephone number is 571-272-3357. The examiner can normally be reached on M-F 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jenna Davis
Primary Examiner
Art Unit 1771

jld